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February 23, 1976

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TO: The Deputy Secretary of Defense
The Assistant to the President for
National Security Affairs
The Director of Central Intelligence
The Chairman of the Joint Chiefs of Staff
The Under Secretary of the Interior
The Director, National Science Foundation
The Administrator, Federal Energy
Administration

SUBJECT: US Policy Toward Svalbard (Spitsbergen)

Attached for your comment and/or concurrence are a draft Memorandum for the President and the study of US policy toward Svalbard. Editorial comments may be provided to Miss Anne Pinkney, Department of State, 632-1774. Substantive comments should be addressed to the Chairman in writing.

Your response is requested by c.o.b. Monday, March 1, 1976.

Wreatham E. Gathright
Wreatham E. Gathright
Staff Director

Attachments:

As stated

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MEMORANDUM FOR THE PRESIDENT

Subject: US Policy Toward Svalbard (Spitsbergen)

As directed, the Under Secretaries Committee has conducted a comprehensive review of US policy toward the Norwegian Arctic territory of Svalbard (formerly called Spitsbergen) including US strategic, economic, and political interests, legal questions posed by Norway's sovereignty claims, relevant law-of-the-sea interests, and the attitudes of our Allies. The principal issues for policy decision are summarized below. Recommendations of the Members of the Committee are presented for your consideration. A detailed report, prepared by an interagency group under the chairmanship of the Department of State, is attached.

I. Background

Under the 1920 Treaty of Spitsbergen, the "full and absolute sovereignty of Norway" over the Svalbard archipelago is recognized, subject to certain stipulations,

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principally (1) that the nationals of all signatories may carry on economic operations on a basis of absolute equality and (2) that Norway not create or allow the establishment of any naval base or construct any fortification in the archipelago. This territory "may never be used for war-like purposes."

The long-established Norwegian and Soviet coal mining operations are the only economic enterprise of any size on Svalbard. Oil exploration on the islands of the archipelago has been undertaken by American and European companies as well as by the Soviets from the 1960's. No oil has been found and only insignificant amounts of gas.

Geologic studies have, however, led to high expectation of petroleum wealth lying under the continental shelf around Svalbard. Estimates of unproven oil reserves in the shelf area could be comparable to present proven reserves in the US or the North Sea. Taking into account the necessary time for exploration and development of necessary technology, initial oil production would not be expected before the mid-1980's at the earliest, with high production levels reachable in the 1990's. Development would depend on continued high oil prices as costs will be much higher than costs for North Sea oil.

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The Svalbard archipelago and its adjacent seas also have a present and a potential military significance which derive from their proximity to the Soviet Kola Peninsula, the importance of the ice-free routes between the Barents and the Norwegian Seas, and the possible utilization of these seas as patrol zones for ballistic missile-submarines. From its bases along the Kola Peninsula, the Soviet Northern Fleet (comprising about one-fourth of the Soviet Union's major surface combatants and one-half of its submarines) enjoys the only ice-free unrestricted access to the open ocean from European Russia.

II. Major Issues

1. Bolstering Norwegian Sovereignty on Svalbard

Only recently has Norway begun to formulate a "national policy" for Svalbard which will strengthen administration over the islands and support Norwegian economic and research activities there. In effect, the policy is aimed at the affirmation of Norwegian sovereignty *vis-à-vis* the Soviets, whose population on Svalbard is double that of Norway's, and who constitute the only major foreign presence. The Soviets appear determined to maintain a larger presence than the Norwegians and to expand it. They have resisted compliance with a series

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of Norwegian administrative and environmental regulations, and for many years have operated their coal mining communities as independent enclaves, accessible to only a limited number of Norwegian officials by invitation.

The Norwegians have indicated they would appreciate US support for efforts to strengthen their sovereignty, including the possible expansion of US commercial and scientific activity as a counterweight to the Soviets. They believe this would strengthen the basis for Norway's enforcement of the Spitsbergen Treaty's provisions for equality in regulation of economic activities, and for demilitarization of the archipelago.

US Interests

The US must decide how to respond to the Norwegian requests for support, taking into account (1) our interest and NATO's interest in precluding Soviet encroachments in a region which is part of the NATO area, and in avoiding destabilization in a region which has not heretofore been subject to active East-West confrontation; (2) our rights as a signatory of the Spitsbergen Treaty; and (3) potential commercial and scientific benefits of an enlarged US presence on Svalbard.

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If the Soviets push for military or economic advantages, or simply to extend their presence, stability in the East-West relationship in this area could be affected. Stability could also be undermined by US or Norwegian actions which generate a Soviet perception of a "threat", either to its security interests, or to Soviet rights under the Treaty. Thus, efforts to bolster Norwegian sovereignty on Svalbard would require a careful combination of firmness and discretion. Such efforts should include continued support for strict application of the demilitarization provision of the Treaty.

The rights of the handful of US firms holding claims on Svalbard do not appear to be involved in the issue here discussed. While additional US firms are free to undertake activity on Svalbard under the terms of the Spitsbergen Treaty, US Government encouragements for increased economic activity are judged not likely to have any useful result. A preliminary survey of scientific possibilities does, however, indicate that US projects of scientific value could be undertaken.

2. National Rights on the Svalbard Continental Shelf

The prospect of substantial hydrocarbon wealth on the continental shelf around Svalbard raises the question of how exploitation of this wealth might be

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regulated. Norway has taken the legal position that it has the sovereign rights over the entire continental shelf connecting the Norwegian mainland and Svalbard that, according to recognized international law, would normally accrue to a coastal state. Norway asserts that the Spitsbergen Treaty provision of equal rights for economic exploitation does not apply to the shelf outside of Svalbard's territorial waters. A legal case can also be made for the alternative view that, as Norwegian sovereign rights on the shelf arise as a natural extension of sovereignty accorded by the Spitsbergen Treaty over land areas, the limitations on that sovereignty stipulated in the Treaty are likewise extended to the shelf.

With this Norwegian position in mind, and in anticipation of the beginning of the Norwegian-Soviet continental boundary delimitation talks, the US and UK sent notes to the Norwegian Government in 1974 reserving any rights to mineral resources of Svalbard's shelf that they may have under the Treaty, without, however, setting forth any interpretation of what those rights might be. Other states (Italy, Soviet Union, and France) have also entered reservations.

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US Interests

The US has a national interest and a commercial interest in securing access to any large reserves of oil or gas that may be found in the waters of the Svalbard area. Moreover, although economically significant exploitation of such reserves seems unlikely before 1990, and would depend on the maintenance of high oil prices, the feasibility of such exploitation, if recognized in the near term, could play an important role in oil politics and in the energy policies of our Allies and other nations.

Extension of Spitsbergen Treaty rights of exploitation to the shelf is one technique for assurance of access to its reserves, not only for the US but all other states because the Treaty remains open to adherence by other states. If sovereign rights on the shelf resided in Norway without qualification, then, in addition to exclusive control over access, Norway might seek to delay exploitation indefinitely for environmental or security reasons; Norway's economic interest could be satisfied by oil from the North Sea and Norwegian Sea for some time to come.

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Against these considerations must be weighed the common US and Norwegian security interests in the area and Norway's important role on the northern flank of NATO. Stability could be undermined if Soviet security concerns were aroused by active oil exploration and exploitation leading to the presence of many installations belonging to many countries. As discussed in the attached study, security concerns are not likely to arise in the near term from an identification of a specific threat, but could arise from a generalized fear about the trend of events and possible future development of threatening capabilities.

Norway has pointed to practical problems of oil exploration and exploitation under extension of the Treaty regime to the shelf. For example, the applicable mining code adopted pursuant to the Treaty is inadequate in many respects and supposedly could lead to a "Klondike-like grab". It could be difficult to modify without a consensus or at least a majority vote of all signatories. There are, in any case, likely to be serious regulatory problems regardless of what sovereignty status is applied, with respect to allocation, policing, pollution controls, and safeguarding of military and commercial rights of navigation by sea and air.

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Therefore, as set forth in the recommendations below, the best outcome would appear to be a negotiated resolution of the shelf issue in which Norway obtains the desired recognition of its sovereign rights, but provide guarantees of access. A regulatory regime under Norwegian administration would be sought which was less subject to the disadvantages of a regime under the Treaty, and which would take security interests into account. Maintaining our reservation on shelf rights prior to a settlement along these lines could provide an incentive to the Norwegians to seek a mutually acceptable accommodation.

In resolving whether Treaty parties have rights beyond the territorial sea of Svalbard, the US should protect our broad law of the sea interests, insuring that our positions in the Svalbard dispute are consistent with our general law of the sea positions. Any restrictions on the operation of naval ships in the waters of Svalbard, or military aircraft over the associated air space, would be of grave concern. Whatever Treaty rights may eventually be extended to the shelf, the demilitarization provision should not be interpreted to limit US military activities offshore. If, however, Soviet or other security concerns arise from proliferation of oil rigs or other installations on the shelf, it could be desirable to provide assurances of legitimate intent, e.g., by negotiating inspection arrangements for such installations

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The issue of sovereignty rights on the shelf and its waters could also impact on fishing interests. The major fishing activity in recent years has been by the USSR, Norway, and UK. The US has no direct fishing interest in the area.

3. Soviet-Norwegian Continental Shelf Boundary Negotiations

In November, 1975, the Soviets and Norwegians met for the second round of negotiations to delineate the boundary between the continental shelves extending from their northern borders. The Norwegians proposed following the "equidistant-line" principle. The Soviets have proposed a "sector" line running due north from the Norwegian-Soviet border, which would lie to the west of the equidistant line. The talks appear to have settled down to routine boundary negotiations, with no sense of urgency expressed by either side.

The US plays no direct role in these negotiations, but has an interest in both the process and the outcome. There have been informal Soviet suggestions of a possible "package deal" which would handle a number of outstanding issues in the Arctic. Such a package deal might call for Norwegian concessions potentially adverse to Western interests as a price for some degree of Soviet accommodation in other areas.

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III. Recommendations

After examination of a range of alternatives, as set forth with their pros and cons in Section VII of the attached study, the Members of the Under Secretaries Committee recommend a US policy toward Svalbard consisting of the following elements:

1. The US should provide diplomatic support to Norway's efforts to assert more vigorously its sovereignty on Svalbard. This should include expressions of support and encouragement to the Norwegians, encouragement of support for Norway among our Allies and other Treaty signatories, and demarches to the Soviets.

2. In determining how sovereignty is to be exercised, the US should, in general, be guided by Norway's perception of its sovereignty needs. The US should counsel firmness in defense of Norway's legitimate rights as the approach best calculated to secure those rights. At the same time, it would be appropriate for Norway to supply assurances to the Soviets that the Norwegian administrative requirements will be strictly in accordance with the provisions of the Spitsbergen Treaty and, where the Treaty is ambiguous, will be within the limits of reason.

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3. Demarches to the Soviets would draw on the US-Soviet mutual interest in relaxing tensions, maintaining stability in the Northern area, and fulfillment of CSCE objectives. Consideration should be given to inducing US-Soviet cooperation on Arctic problems including joint scientific activity on Svalbard. The US should provide its own assurances to the Soviets that Norway seeks carefully delimited objectives, without constraint on legitimate Soviet prerogatives. It should be made clear that in any controversy with the Soviets, Norway does not stand alone.

4. Depending on the progress of Norwegian and US discussions with the Soviets, consideration should be given at a future time to a proposal for reciprocal assurances in support of strict adherence to the principle of demilitarization of the Svalbard archipelago and its territorial waters. However, whatever regime is eventually placed over the continental shelf, the demilitarization provision of the Treaty should not be interpreted to limit US military activities offshore.

5. The US should undertake a program of expanded scientific effort in the Svalbard region and additional funds should be provided for this increased activity as appropriate. Standards in regard to the scientific value of projects and qualifications of researchers should be

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strictly maintained. Efforts to develop joint programs with Norway, as well as multinational programs with Soviet participation, should be expanded.

6. An intelligence survey of present Soviet dispositions and activities in the Svalbard region should be carried out to provide a base-line against which to measure future Soviet activity.

7. The US should seek to protect its economic interests on the continental shelf and those of its Allies through guarantees supplied by Norway in the context of full acceptance of Norway's sovereignty rights over the shelf, rather than through extension of Spitsbergen Treaty rights. This approach is most likely to meet our objectives in the Northern region, which include stability, Alliance cohesion, law of the sea interests, and orderly economic development. It would include these steps:

(a) The US reservation of rights it may have under the Spitsbergen Treaty, including any rights with respect to exploration and exploitation of mineral resources of the continental shelf appertaining to Svalbard should be maintained for the time being. It should be clear that, as was also stated by the British in their reservation, the US has not yet been able to formulate a

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definite view on the Norwegian legal position with regard to Norwegian jurisdiction over the continental shelf in the Svalbard region.

(b) While reserving its position on jurisdiction over the Svalbard shelf, the US should seek to elucidate Norwegian views and any Norwegian plans for a regulatory regime to guide exploration and exploitation of hydrocarbon resources under the waters of the Svalbard region. In general, the US should not seek a resolution of the legal problems before a clearer picture of the practical problems and their possible solutions emerges.

(c) Depending on the progress of discussion with the Norwegians along the above lines, the US should consider entering into consultations with the Norwegians and our principal allies, and eventually with other Spitsbergen Treaty signatories, in order to formulate mutually acceptable guidelines for regulation of hydrocarbon exploration and exploitation on the shelf with, as a minimum, some form of assured access to the final product.

If this approach to a policy for Svalbard is approved, the Members of the Under Secretaries Committee recommend the following specific measures to begin implementation:

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1. The Department of State should inform the Norwegian Government of US views and policy toward Svalbard. In developing US positions, the Department of State should consult with the Department of Defense on any related security matters, and in particular, on any matters relating to US law of the sea interests or to demilitarization of Svalbard.

2. Exploratory discussions with the Allies, the Soviets and others should be undertaken by the Department of State, as appropriate.

3. The Department of State and the National Science Foundation should complete the survey now underway regarding possible scientific projects in the Svalbard region and develop an appropriate program. The Nansen Drift Station project, already in the planning stage, should be prosecuted expeditiously.

4. The Department of State and Department of Defense should jointly submit through appropriate channels a specific proposal for an intelligence survey on the Soviet presence on Svalbard.

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5. The Department of State and Federal Energy Administration should prepare a preliminary study of possible regulatory regimes that might be applied to exploration and exploitation of hydrocarbon resources in the waters of the Svalbard region under various types of jurisdiction. The study would be exploratory, rather than definitive.

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Chairman

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US Policy Towards Svalbard (Spitsbergen)
Response to NSSM 232

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